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SCHEMBARI; ACP JET CHARTERS, INC.;
11 PHENIX JET INTERNATIONAL, LLC; and
12 COSA DI FAMIGLIA HOLDINGS, LLC

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 WESTERN AIR CHARTER, INC., doing
16 business as JET EDGE
17 INTERNATIONAL, a California
corporation,

18 Plaintiff,

19 v.

20 PAUL SCHEMBARI, an individual *et al.*,

21 Defendants.

Case No.: 2:17-cv-000420-JGB-KS

Hon. Jesus G. Bernal

**DEFENDANTS PAUL
SCHEMBARI, ACP JET
CHARTERS, PHENIX JET
INTERNATIONAL, AND COSA DI
FAMIGLIA HOLDINGS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

Hearing: August 6, 2018

Time: 9:00 AM

Judge: Hon. Jesus G. Bernal
Courtroom 1
3470 Twelfth Street
Riverside, CA 92501

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I. INTRODUCTION

Plaintiff Western Air Charter (“Jet Edge”) seeks reconsideration of an Order (ECF No. 89) issued in October 2017 by the preceding District Judge in this case, the Honorable Andre Birotte, Jr. (“Motion”). Motion, ECF No. 144. That order dismissed with prejudice the operative complaint’s claims for intentional interference with contract and breach of the duty of loyalty on the grounds that those claims were preempted by the California Uniform Trade Secrets Act (“Act”). Order, ECF No. 89 at 5–9. Jet Edge’s Motion should be denied for at least three reasons.

First, granting reconsideration requires materially different evidence. This requirement is not met. The new evidence is essentially identical to the information in Jet Edge’s operative complaint that Judge Birotte considered.

Second, Jet Edge’s Motion is, in reality, a belated attempt to amend its Complaint, long after the deadline for doing so has passed. Jet Edge cannot meet its heavy burden of demonstrating compliance with both Federal Rules of Civil Procedure 16(b) and 15 where, as is the case here, discovery has long since closed; the summary judgment deadline is imminent; and granting the Motion would require amending the scheduling order. Jet Edge must demonstrate that it acted “diligently” in bringing the Motion. All documents supporting the Motion were produced to Jet Edge no later than March 5, 2018, and the cited deposition testimony is identical to these documents. “Courts have held that waiting two months after discovering new facts to bring a motion to amend does not constitute diligence under Rule 16.” *Sako v. Wells Fargo Bank, Nat’l Ass’n*, Case No. 14-cv-1034, 2015 WL 5022326 at *2 (S.D. Cal. Aug. 24, 2015).

Third, an order permitting Jet Edge to re-assert claims that were previously dismissed with prejudice by the Court requires a showing that the Court clearly erred or faced substantially different evidence. Neither is the case. In any event, the Court’s ruling is correct even when considering the new evidence. The Act preempts

all claims based on a common nucleus of operative facts. Here, Jet Edge's intentional interference with contract and duty of loyalty claims are founded on Defendants' alleged theft of customers. This is the exact same foundation for Jet Edge's claim for misappropriation of trade secrets.

II. ARGUMENT

A. The standard for reconsideration is not met because the new facts are not materially different than the prior facts.

The Motion should be denied because it does not meet the standard for reconsideration. Granting reconsideration requires "a material difference in fact or law from that presented to the Court" or "the emergence of new material facts" L.R. 7-18. Though the Motion presents new facts, they are not materially different from the factual allegations in the Complaint ruled upon in Judge Birotte's Order.

This chart details how the facts in the Motion all have direct analogs in the complaint:

| MOTION | COMPLAINT (ECF NO. 26) |
|---|---|
| In 2015, Schembari negotiated with Sojitz representatives on creating a new company. Motion at 13–14 (CMECF numbering). | <p>Para. 17: "SOJITZ broke off the negotiations because it intended to pursue a relationship with a SCHEMBARI-related entity, including CDF and/or ACP."</p> <p>Para 59: "DEFENDANTS took actions to disrupt the negotiations between JET EDGE and SOJITZ, including but not limited to secretly setting up a competing venture and negotiating with SOJITZ to fund and/or co-venture in that competing business."</p> <p>Para. 60: "On information and belief, SCHEMBARI used JET EDGE company resources to meet with SOJITZ for the purposes of interfering with the negotiations and business relationship between SOJITZ and JET EDGE."</p> <p><i>See also</i> Amended Complaint, ECF No. 26 at</p> |

| | | |
|----|--------------------------------------|--|
| 1 | | ¶¶ 61, 66. |
| 2 | While at Jet Edge, Schembari | Para. 18: “In the months following |
| 3 | created a business plan. The | SCHEMBARI’s departure from JET EDGE, |
| 4 | business plan identified | JET EDGE customers terminated their aircraft |
| 5 | Schembari’s future customers as | charter and management agreements with JET |
| 6 | including aircraft that were | EDGE and entered into agreements with |
| 7 | currently managed by Jet Edge. | PHENIX JET.” |
| 8 | The business plan also identified | Para. 39: “[D]uring and after his employment |
| 9 | Jet Edge as a competitor. Motion | with JET EDGE, SCHEMBARI acted in |
| 10 | at 13–16 (CMECF numbering). | violation of the terms of his Employment |
| 11 | | Agreement by (a) planning, organizing, and |
| 12 | | operating a competing venture (PHENIX JET) |
| 13 | | while still employed by JET EDGE and (b) |
| 14 | | using JET EDGE’S confidential and trade |
| 15 | | secret information to steal JET EDGE’s |
| 16 | | business. SCHEMBARI’s actions resulted in |
| 17 | | multiple JET EDGE customers terminating |
| 18 | | their relationships with JET EDGE and |
| 19 | | making charter and management agreements |
| 20 | | with DEFENDANTS.” |
| 21 | | <i>See also</i> Amended Complaint, ECF No. 26 at |
| 22 | | ¶¶ 19–24, 40, 45. |
| 23 | Jet Edge’s customers sent | Para. 21: On March 23, 2016, Pocket |
| 24 | cancellation letters to Jet Edge and | Corporation terminated its relationship with |
| 25 | moved their business to Schembari. | JET EDGE. The aircraft owned by Pocket |
| 26 | Motion at 17–18 (CMECF | Corporation, U.S. Registration number |
| 27 | numbering). | N810TS, is now listed on the commercial |
| 28 | | operating Air Carrier Certificate for ACP JET |
| | | CHARTERS. |
| | | Para. 24: On December 19, 2016, SOJITZ |
| | | notified JET EDGE that the aircrafts owned by |
| | | SAM CAYMAN, FAST RETAILING, and |
| | | SEGA SAMMY were to be removed from |
| | | JET EDGE’s Air Carrier Certificate and the |
| | | aircraft records, logbooks and appropriate |
| | | documents transferred to SOJITZ’s new |
| | | company PHENIX JET, which is owned and |
| | | operated by DEFENDANTS, including |

| | | |
|----|-------------------------------------|---|
| 1 | | SCHEMBARI. |
| 2 | | Para. 40: In the months following |
| 3 | | SCHEMBARI's departure from JET EDGE, |
| 4 | | multiple JET EDGE customers terminated |
| 5 | | their Aircraft Charter Management |
| 6 | | Agreements with JET EDGE. Those |
| 7 | | customers include POCKET |
| 8 | | CORPORATION, SEGA SAMMY, SAM |
| 9 | | CAYMAN, and FAST RETAILING. Further, |
| 10 | | those former JET EDGE customers have made |
| 11 | | agreements with DEFENDANTS and are now |
| 12 | | chartered and managed by PHENIX JET. |
| 13 | | <i>See also</i> Complaint, ECF No. 26 at ¶¶ 16, 18, |
| 14 | | 22–23, 39. |
| 15 | Schembari devised the Phenix Jet | Para. 13: "On February 4, 2016, while still |
| 16 | name while employed with Jet | employed by JET EDGE, SCHEMBARI |
| 17 | Edge. Motion at 13 (CMECF | registered the domain name 'phenixjet.com'." |
| 18 | numbering). | |
| 19 | | |
| 20 | While still employed with Jet Edge, | Para 6: "[W]hile still employed by JET EDGE, |
| 21 | Schembari competed with Jet Edge | SCHEMBARI planned to set up and did set up |
| 22 | by signing a brokerage agreement | a competing venture in the form of PHENIX |
| 23 | with Sojitz. Motion at 15 (CMECF | JET. Further, SCHEMBARI competed against |
| 24 | numbering). | JET EDGE using JET EDGE's confidential |
| 25 | | and trade secret business and customer |
| 26 | | information." |
| 27 | | |
| 28 | Schembari worked on acquiring an | Para. 11: "In January 2016, the predecessor to |
| | interest in ACP Jet Charters both | DEFENDANT ACP, ACP Jet Charters, Inc. |
| | during his employment with Jet | and JFI Jets merged to form Alerion Aviation |
| | Edge and after his employment | ('ALERION'). . . JET EDGE is informed and |
| | with Jet Edge. Motion at 16–17 | believes and on that basis alleges that |
| | (CMECF numbering). | subsequent to the merger, ALERION has |
| | | operated under the JFI Jets FAA Air Carrier |
| | | Certificate, discontinuing use of the |
| | | PREDECESSOR ACP's Air Carrier |
| | | Certificate." |
| | | Para. 12: "JET EDGE is informed and believes |
| | | and on that basis alleges that SCHEMBARI, |
| | | while still employed by JET EDGE, as part of |

his and DEFENDANTS’ scheme to unfairly compete against JET EDGE, launched a competing business by, *inter alia*, negotiating the acquisition of the ACP Jet Charters, Inc. corporate entity, name, and FAA Air Carrier Certificate from ALERION for DEFENDANTS to launch their competing business.”

Para. 25: “Documents filed with the Florida Secretary of State identify SCHEMBARI as DEFENDANT ACP’s President. SCHEMBARI applied for a fictitious business name in Florida for DEFENDANT ACP to do business as PHENIX JET.”

Jet Edge may claim that there is no direct analog to the email where Schembari “told Jet Edge customers that ‘[f]lights dispatched by . . . Jet Edge . . . never go smoothly’” Motion, ECF No. 144 at 9–10 (CMECF numbering). But that email cannot be said to be materially different from the Complaint’s allegations, for example: “DEFENDANTS took actions to disrupt the negotiations between JET EDGE and SOJITZ”; “SCHEMBARI used JET EDGE company resources to meet with SOJITZ for the purposes of interfering with the negotiations and business relationship between SOJITZ and JET EDGE”; and “SCHEMBARI took intentional actions designed to induce a disruption of the contractual relationships between JET EDGE and its customers.” Amended Complaint, ECF No. 26 at ¶¶ 49, 59–60.

In short, the facts Jet Edge learned in discovery are not materially different from the allegations in its Complaint that Judge Birotte ruled upon.

The four cases cited in the Motion (Motion at 19–20¹) support the conclusion that Jet Edge’s new evidence is not materially different. All four are cases where the new facts were material because they *directly contradicted* the facts previously considered by the court. *Dufour* involved a prior order where the relevant fact was

¹ CMECF numbering.

1 that the contract was oral and not written (which affects the applicable statute of
 2 limitations). *Dufour v. Allen*, Case No. 14-cv-5616, 2015 WL 8783264 at *4 (C.D.
 3 Cal. Dec. 14, 2015). The new fact established the opposite: the contract was actually
 4 written. *Id.*

5 *Amesco* involved a prior order that entered judgment for the defendants
 6 because the plaintiff “lacked capacity to sue because its corporate status was
 7 suspended” *Amesco Exports, Inc. v. Associated Aircraft Mfg. & Sales, Inc.*, 87
 8 F. Supp. 2d 1013, 1014 (C.D. Cal. 1997). The new fact established the opposite: the
 9 corporation’s status was reinstated and effective retroactively, so the corporation
 10 always had capacity to sue. *Id.* at 1014–15.

11 *Hamid* involved a prior order on the Class Action Fairness Act’s local
 12 controversy exception, which holds that localized class actions should not be
 13 removed to federal court. *Hamid v. Nike Retail Servs., Inc.*, Case No. 17-cv-0600,
 14 2018 WL 1684316 at *6 (C.D. Cal. Apr. 6, 2018). The prior order found the
 15 exception did not apply, partly based on the fact that a defendant (a California
 16 manager) employed “2% or less” of the putative class. *Id.* at *4. The new fact
 17 established virtually the opposite: more than 20% of the putative class (a ten-fold
 18 increase) was employed by that defendant. *Id.*

19 Yet even that new fact was not material by itself. In addition, the prior order
 20 partly relied on a district court decision that was since reversed. *Id.* And
 21 reconsideration was granted “[b]ecause Plaintiff has pointed to newly discovered
 22 evidence and a change in the law” *Id.* at *5. Additionally, the decision
 23 contains language that the change of law was independently sufficient to satisfy the
 24 standard. *Id.* at *4 (“Because the Ninth Circuit reversed the district court decision in
 25 *Christmas*, Plaintiff has met his burden of showing a ‘change in law’ under Local
 26 Rule 7–18(b).”). The court did not hold that the new fact was independently
 27 sufficient to satisfy the standard. Stated otherwise, this new fact—learning in
 28

discovery that the defendant actually employed more than 20% of the class, instead of less than 2% of the class —was not enough on its own to warrant reconsideration.

School District No. 1J was venued in Oregon, *School Dist. No. 1 J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1258 (9th Cir. 1993), so it was not governed by the Central District’s materiality standard. And, in any event, the court affirmed the denial of reconsideration. *Id.* at 1262–63.

B. The Motion should be denied because Jet Edge delayed four months in bringing the Motion and because amendment would be futile.

Although the Motion is fashioned as seeking reconsideration of the Court’s October 2017 Order dismissing its tort claims, the relief Jet Edge seeks is the right to file an amended complaint. The Motion should additionally be denied because Jet Edge does not satisfy the standard for amending the complaint.

Because the Motion was filed after the scheduling order’s deadline for amending the pleadings (ECF No. 65 at 2), Jet Edge “must first show ‘good cause’ for amendment under Rule 16(b)” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). “[T]hen, if ‘good cause’ be shown, the party must demonstrate that amendment was proper under Rule 15.” *Id.*

Here, Jet Edge cannot satisfy either requirement.

1. Good cause does not exist because Jet Edge had all evidence supporting the Motion in its possession by no later than March 5, 2018.

Good cause does not exist because Jet Edge possessed the evidence supporting the Motion by March 5, 2018. Yet, Jet Edge delayed filing the Motion four months.

Good cause “primarily considers the diligence of the party seeking the amendment.” *Id.* at 609. The district court may modify the schedule “if it cannot reasonably be met despite the diligence of the party seeking the extension.” *Id.*

Good cause to amend the complaint does not exist when the plaintiff (i) “wait[s] one month” from the date he “knew of the basis for seeking to amend his complaint” to “inform [the defendant] of his intention to seek leave to amend” and

(ii) waits three months from the date he learned the basis for amendment to file the motion. *Schwerdt v. Int'l Fidelity Ins. Co.*, 28 Fed. App'x 715, 719 (9th Cir. 2002) (mem.). Indeed, “[c]ourts have held that waiting two months after discovering new facts to bring a motion to amend does not constitute diligence under Rule 16.” *Sako*, 2015 WL 5022326 at *2; *EEOC v. Bakery*, Case No. 13-cv-04507, 2016 WL 1301173 at *3 (N.D. Cal. Apr. 4, 2016) (denying motion for leave to amend the complaint where (i) plaintiff learned of the relevant acts in December 2015, (ii) plaintiff filed the motion “seven weeks after those acts occurred,” and (iii) the dispositive motions hearing was set for April 14, 2016); *Irise v. Axure Software Solutions, Inc.*, Case No. 08-cv-03601, 2009 WL 3615973 at *1, *3, *6 (C.D. Cal. July 30, 2009) (denying leave to amend the complaint when the plaintiff received documents relating to the amendment on March 20, 2009, but the plaintiff waited to file the motion for leave to amend until June 29, 2009); *Experexchange, Inc. v. Doculex, Inc.*, Case No. 08-cv-03875, 2009 WL 3837275 at *29 (N.D. Cal. Nov. 16, 2009) (denying motion for leave to amend the complaint where the plaintiff “waited two months after discovering its allegedly ‘new’ facts to bring its motion to amend”).

Here, Jet Edge delayed four months in filing the Motion, and the dispositive motion filing deadline is imminent (August 6, 2018, under ECF No. 159). Every documentary exhibit attached to the Motion was in Jet Edge’s possession no later than March 5, 2018. And the deposition testimony is duplicative of the exhibits.

a. Every documentary exhibit attached to the Motion was in Jet Edge’s possession by March 5, 2018.

The new evidence filed with the Motion comprises 19 exhibits. Of these, 15 are documents, and four are excerpts of deposition transcripts.

Jet Edge had every document in its possession by March 5, 2018:

- Exhibits 1–2, 4–7, and 10–16: Defendants produced these documents to Jet Edge on March 5, 2018. Declaration of Dan Terzian in support of Opposition at ¶ 4 (“Terzian Dec.”).

- Exhibit 18: Jet Edge produced this document, which is correspondence to Jet Edge dated March 2016. *Id.* at ¶ 5. Presumably Jet Edge had this document in its possession before filing this case.
- Exhibit 19: Defendants produced this document to Jet Edge on approximately November 22, 2017. *Id.* at ¶ 6.

The Motion also argues that Defendants produced documents in May 2018. Motion at 25 (CMECF numbering). This is irrelevant because the Motion does not rely on any documents produced in May 2018.² See Terzian Dec. at ¶¶ 4–6.

b. The deposition transcripts attached to the Motion are all cited for propositions that are identical to the information contained in the documentary exhibits or in the complaint.

The deposition transcripts attached to the Motion are for two depositions taken in April 2018 (Seidel and Schembari) and two depositions taken on May 3 and 4, 2018 (Quenga and Webb). If timeliness were assessed from the deposition dates, the Motion would be untimely because Jet Edge waited two months to bring this Motion. Diligence would have required ordering expedited transcripts, and Jet Edge does not provide any evidence on that (or on when it received the transcripts). Moreover,

² To the extent the Court desires further context, both sides initially faced difficulties in collecting documents. For instance, Jet Edge agreed to produce all documents relating to its trade secrets claim on August 7, 2017. Terzian Dec. at ¶ 7, Exhibit J at EX046–050. Yet Jet Edge waited until the week of April 17, 2018, to produce over 11,800 pages responsive to the request for documents relating to its trade secrets claim. *Id.* at ¶ 9. Before April 17, 2018, Jet Edge’s total production was only 1,486 pages, and few of those pages related to Jet Edge’s trade secret claim. *Id.* at ¶ 8. By contrast, Defendants had produced over 15,000 pages at that time. *Id.* The allegation that Defendants “withheld” documents is simply not true. This March 2018 production comprised mostly emails from Schembari’s personal Gmail account, and Defendants produced the responsive emails reasonably promptly after counsel obtained access to those accounts. *Id.* at ¶ 10. The Motion’s rhetoric appears to be a transparent, after-the-fact attempt to explain away Jet Edge’s delay in seeking reconsideration.

diligence would have required noticing the depositions earlier.³ *Irise*, 2009 WL 3615973 at *3 (holding that the plaintiff was not diligent where we had the “information on March 20, 2009” but “waited until early May 2009 to seek the depositions”). Jet Edge originally noticed Quenga for a deposition on February 16, 2018, but did not proceed with the deposition on that date. Terzian Dec. at ¶ 11, Exhibit K. Webb was identified in 38 documents in the March 5, 2018 production, and Jet Edge’s lawyers were aware of him and his role in this case by March 16. *Id.* at ¶¶ 13–14.

In any event, the deposition testimony does not materially differ from the exhibits or the Complaint’s allegations. Therefore, Jet Edge’s diligence should be assessed from the date the documents were produced—not the dates the depositions occurred.

This chart details (i) the deposition testimony the Motion relies upon and (ii) the exhibits and Complaint allegations it duplicates:

| DEPOSITION | EXHIBIT/COMPLAINT |
|--|--|
| Quenga deposition: Jet Edge and Defendants are competitors. Motion at 14 (CMCECF numbering). | Exhibit 5 at PHX006769–0067670: Identifies Jet Edge as a competitor. Amended Complaint, ECF No. 26 at ¶ 40: “In the months following SCHEMBARI’s departure from JET EDGE, multiple JET EDGE customers terminated their Aircraft Charter Management Agreements with JET EDGE. Those customers include POCKET CORPORATION, SEGA SAMMY, SAM CAYMAN, and FAST RETAILING. Further, |

³ The first depositions were supposed to commence in March 2018, but Plaintiffs unilaterally cancelled them on the basis that 100 documents were improperly designated highly confidential. ECF No. 118 at 1. Magistrate Judge Stevenson was “unpersuaded that the depositions of Mr. Frank and Mr. Eric, either individually or on Rule 30(b)(6) topics relating to information in *Jet Edge*’s knowledge, possession, and control, cannot proceed without resolving the dispute concerning Defendant’s document designation.” *Id.* at 2.

| | | |
|----|---|---|
| 1 | | those former JET EDGE customers have made agreements with DEFENDANTS and are now chartered and managed by PHENIX JET.” |
| 2 | | |
| 3 | | |
| 4 | Schembari deposition: Schembari came up with the name Phenix Jet while at Jet Edge. Motion at 13 (CMECF numbering). | Amended Complaint, ECF No. 26 at ¶ 13: “On February 4, 2016, while still employed by JET EDGE, SCHEMBARI registered the domain name ‘phenixjet.com’.” |
| 5 | | |
| 6 | | |
| 7 | Seidel deposition: Schembari advised Seidel that Schembari was bringing aircraft to the new company. Motion at 17 (CMECF numbering). | Exhibit 16: March 2016 email from Schembari to Seidel, Naito (Sojitz), and Sakurai (Sojitz) regarding ACP deal and moving aircraft from a prior management company to the new company. |
| 8 | | |
| 9 | | |
| 10 | | |
| 11 | Quenga deposition: The aircraft transferred to Defendants were under Jet Edge management at the time. Motion at 15 (CMECF numbering). | Amended Complaint, ECF No. 26 at ¶ 40: “In the months following SCHEMBARI’s departure from JET EDGE, multiple JET EDGE customers terminated their Aircraft Charter Management Agreements with JET EDGE. Those customers include POCKET CORPORATION, SEGA SAMMY, SAM CAYMAN, and FAST RETAILING. Further, those former JET EDGE customers have made agreements with DEFENDANTS and are now chartered and managed by PHENIX JET.” |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | Webb deposition: Sojitz provided the financial information for the business plan’s projections. Motion at 14 (CMECF numbering). | Exhibits 6–7: February 2016 email from Rodney Webb to Paul Schembari and Elsie Quenga regarding financial forecast for Defendants and a spreadsheet of the financial forecast. The financial plan identifies the specific registration numbers of each aircraft. |
| 19 | | |
| 20 | | |
| 21 | Schembari deposition: The financial plan identified Jet Edge’s aircraft as Defendants’ customers. Motion at 13 (CMECF numbering). | Amended Complaint, ECF No. 26 at ¶ 59: “DEFENDANTS took actions to disrupt the negotiations between JET EDGE and SOJITZ, including but not limited to secretly setting up a competing venture and negotiating with SOJITZ to fund and/or co-venture in that competing business.” |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | Schembari deposition: Schembari | Exhibit 14: February 2016 email from |

| | |
|--|---|
| <p>1 did not resign until the he was sure 2 the aircraft management agreement 3 (AMA) for the aircraft bearing 4 registration number N2020 was 5 signed. Motion at 16 (CMECF 6 numbering).</p> | <p>Schembari to Sakurai (Sojitz) regarding the plan for getting AMA signed this week” and notifying Jet Edge of his resignation.</p> |
| <p>6 Schembari deposition: While at Jet 7 Edge, Schembari worked with 8 Sojitz to create a new company. 9 Motion at 13 (CMECF numbering).</p> | <p>Exhibit 15: January 2016 email from Sakurai (Sojitz) to Schembari regarding a potential brokerage agreement and moving aircraft from Jet Edge to a new entity.</p> <p>Amended Complaint, ECF No. 26 at ¶ 59: “DEFENDANTS took actions to disrupt the negotiations between JET EDGE and SOJITZ, including but not limited to secretly setting up a competing venture and negotiating with SOJITZ to fund and/or co-venture in that competing business.”</p> |

c. Jet Edge did not alert Defendants of the Motion until June 4 and then was dilatory in pursuing it.

Jet Edge did not alert Defendants of the prospective Motion until June 4, 2018. Terzian Dec. at ¶ 15, Exhibit A at EX004. Defendants met and conferred with Jet Edge the next day, June 5. *Id.*

It was then a week later, on June 11, that Jet Edge raised the issue “regarding de-designating confidential information.” *Id.* at ¶ 16, Exhibit B at EX007. After initially providing no information on what it wanted de-designated (*id.* at ¶ 16, Exhibit B at EX007), Jet Edge provided a letter relating to what it sought to de-designate. *Id.* at ¶ 17, Exhibits C–D.

This letter did not directly address what information Jet Edge wanted de-designated. *See id.*, Exhibit D at EX015–EX017. Instead, the letter appeared to be essentially an excerpt of the argument in Jet Edge’s Motion. *See id.*

On June 13, Defendants sought clarification on what, exactly, Jet Edge wanted Defendants to de-designate:

1 Please confirm that Jet Edge is seeking to de-designate only the specific
2 deposition page and line numbers that are contained in either the draft
3 complaint previously sent us or in the June 11 letter.

4 *Id.* at ¶¶ 18–19, Exhibit E at EX019.

5 This same day, Defendants also advised Jet Edge that they needed more
6 information because the June 11 letter contained vague references to exhibits without
7 an explanation of what those exhibits are. *Id.* at ¶ 20, Exhibit F. Specifically,
8 Defendants advised:

9 [T]his June 11 letter is somewhat difficult because it refers to exhibits to
10 your declaration (e.g., ‘Exh. 5 to Exh. A of Estrin Declaration’), and we
11 don’t have the key for what that means. The letter also doesn’t say
12 whether it is seeking to de-designate those exhibits.

13 Could you please advise on the full scope of information that Jet Edge is
14 seeking to de-designate?

15 *Id.* at ¶ 20, Exhibit F at EX024. After this email, Jet Edge then sent Defendants “the
16 exhibits [they] are going to use in [their] motion” and asked Defendants to de-
17 designate all except one. *Id.* at ¶ 22, Exhibit G at EX029.

18 The discussed aim of the parties was for Defendants to get their final position
19 to Jet Edge sufficiently in advance of Friday (when Judge Birotte hears motions) so
20 that Jet Edge could file the motion on Friday, June 22 and have it heard 28 days later.
21 *Id.* at ¶ 23, Exhibit H (Terzian: “We’d appreciate a couple days for us to resolve this
22 and get a final decision. We don’t think this should affect Jet Edge’s deadline
23 because it will get the same hearing date whether it files the motion today or Friday
24 evening”; Estrin: “I know we have until Friday to file the motion, but depending on
25 what you want redacted it will likely change our application to file under seal and
26 other documents. Can you please let us know what we need to redact in regards to
27 these two filings by Wednesday morning?”). Defendants then provided their
28 proposed redactions of exhibits on Wednesday, June 20 at 2:07 PM. *Id.* at ¶ 24,
Exhibit I.

1 Yet Jet Edge did not file the Motion on June 22 as discussed. It waited until
2 July 2 to file the Motion.

3 **d. Defendants would be prejudiced by amendment**
4 **because it would require delaying trial and summary**
5 **judgment deadlines and reopening discovery.**

6 Defendants would be prejudiced if the Motion is granted. Defendants did not
7 target any discovery to intentional interference of contract claims or the duty of
8 loyalty claims because the Court dismissed them. Terzian Dec. at ¶ 25. So granting
9 the Motion would require postponing trial and summary judgment deadlines and
10 reopening discovery.

11 The discovery issue is recognized in a prior stipulation that the parties filed,
12 which sought an extension of discovery deadlines while Defendants' motion to
13 dismiss was pending before Judge Birotte. Stipulation to Modify Scheduling Order,
14 ECF No. 84. The stipulation expressly agreed that "if Defendants prevail on their
15 motion to dismiss Jet Edge's tortious interference with contract claims, Defendants
16 will not need to depose witnesses on any issues related to tortious interference of
17 contracts." *Id.* at 3. It also agreed that "Defendants' written discovery has been
18 targeted at the claims not subject to its motion to dismiss, and they would likely need
19 to conduct further written discovery on the tortious interference claims if those
20 remain part of this action." *Id.* Because Defendants prevailed on the dismissal of
21 the claims for interference of contract and duty of loyalty, they never conducted
22 discovery targeting them. Terzian Dec. at ¶ 25.

23 If these new claims are allowed, Defendants would need to undertake this
24 discovery. As explained below, these new claims would be allowed only if they do
25 not arise out of a common nucleus of operative facts as the trade secret claim. *See*
26 Part II.B.2.b (beginning on page 15). This necessarily means that Defendants would
27 have to conduct discovery on a set of facts that they did not previously explore.
28

1 **2. The Motion should be denied because (i) there is no clear error**
 2 **or substantially different evidence and (ii) Judge Birotte's**
 3 **decision was correct.**

4 Even if Jet Edge presented new facts and could demonstrate good cause and
 5 that its amendment is proper (it cannot), the Motion should still be denied because (i)
 6 there is no clear error or substantially different evidence and (ii) Judge Birotte's
 7 Order was correct.

8 **a. Overruling Judge Birotte's Order requires clear error**
 9 **or substantially different evidence. Neither exists.**

10 This case faces an even higher bar than typical motions to reconsider because
 11 Jet Edge is seeking reconsideration of a ruling entered by a different judge than the
 12 one who ruled on the original motion.

13 For a district judge to overrule another judge's earlier decision in the case, the
 14 prior decision must have been either (a) "clearly erroneous and its enforcement
 15 would work a manifest injustice" or (b) based on "substantially different evidence . .
 16 . ." *Delta Savings Bank v. United States*, 265 F.3d 1017 (9th Cir. 2001); *Cosby v.*
 17 *Autozone, Inc.*, Case No. 2:08-cv-00505, 2016 WL 1626997 at *3 (E.D. Cal. Apr. 25,
 18 2016); *Fox v. De Long*, Case No. 2:14-cv-02947, 2016 WL 6088371 at *8 (E.D. Cal.
 19 Jan. 8, 2016).

20 There is no substantially different evidence for the reasons explained in Part
 21 II.A, beginning on page 2.

22 Nor is there clear error. Judge Birotte's ruling was correct, for the reasons
 23 discussed below. And even if his ruling was wrong, it is not clear error because it is
 24 supported by substantial authority.

25 **b. Judge Birotte's Order was correct because tort claims**
 26 **are preempted when they share a common nucleus of**
 27 **operative facts with the trade secret claim.**

28 Judge Birotte's Order was correct because the claims for intentional inference
 with contract and duty of loyalty are preempted.

1 The Act preempts all claims—both common law and statutory—when those
 2 “claims . . . are ‘based on the same nucleus of facts as the misappropriation of trade
 3 secrets claim for relief.’” *K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations,*
 4 *Inc.*, 171 Cal. App. 4th 939, 958, 962 (2009); *see also Mattel, Inc. v. MGA Entm’t,*
 5 *Inc.*, 782 F. Supp. 2d 911, 986 (C.D. Cal. 2010) (The Act “supersedes any claim
 6 ‘based on the same nucleus of facts as the misappropriation of trade secrets claim,’
 7 even though the superseded claim may seek ‘something more.’”); Order re: Motion
 8 to Dismiss, ECF No. 89 at 4.⁴ A claim is preempted whenever a plaintiff bases any
 9 of its elements on trade secret misappropriation. *E.g., Rovince Int’l Corp. v. Preston,*
 10 Case No. 13-cv-3527, 2013 U.S. Dist. LEXIS 145624, 2013 WL 5539430 at *5, 7
 11 (C.D. Cal. Oct. 7, 2013) (concluding that a claim was not preempted because “none
 12 of the elements . . . will turn on [plaintiff’s] alleged misuse of confidential
 13 information”).

14 Additionally, the Act preempts claims based on “proprietary information that
 15 does not constitute a trade secret . . . where the basis of the property interest is rooted
 16 in the information’s private nature.” *E.g., RSPE Audio Solutions, Inc. v. Vintage*
 17 *King Audio, Inc.*, Case No. 12-cv-06863, 2013 U.S. Dist. LEXIS 37210, 2013 WL
 18 1120664 at *3 (C.D. Cal. Mar. 18, 2013); *Mattel, Inc.*, 782 F. Supp. 2d at 987 (The
 19 Act “supersedes claims based on the misappropriation of confidential information,
 20 whether or not that information meets the statutory definition of a trade secret.”);
 21 *SunPower Corp. v. SolarCity Corp.*, Case No. 12-cv-00694, 2012 U.S. Dist. LEXIS
 22 176284, 2012 WL 6160472 at *5–7 (N.D. Cal. Dec. 11, 2012) (“holding that
 23 CUTSA supersedes claims based on the misappropriation of information, regardless
 24 of whether such information ultimately satisfies the definition of trade secret”); *see*
 25 *also K.C. Multimedia, Inc.*, 171 Cal. App. 4th at 957–58 (rejecting the argument for a

26 ⁴ *See also Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 232, 241 (2010)
 27 (internal brackets omitted), *disapproved on other grounds by Kwikset Corp. v.*
 28 *Superior Court*, 51 Cal. 4th 310 (2011).

1 “narrow interpretation of preemption” and rejecting argument that “common law
2 claims . . . go forward whenever they seek ‘something more’ than trade secret
3 relief”); Order re: Motion to Dismiss, ECF No. 89 at 5.

4 Here, Jet Edge has claimed that a vast range of information is of a private
5 nature and also a trade secret. Amended Complaint, ECF No. 26 at ¶¶ 71–77;
6 Exhibit 21 to Krompier Declaration, ECF No. 147, Proposed Second Amended
7 Complaint at 68–69 (¶¶ 62–66). This includes: “client information,” “agreements
8 between Jet Edge and its customers,” “information regarding business operations,”
9 “information related to JET EDGE’s Asian fleet,” and vendor agreements. Amended
10 Complaint, ECF No. 26 at ¶¶ 71–77; Exhibit 21 to Krompier Declaration, ECF No.
11 147, Proposed Second Amended Complaint at 68–69 (¶¶ 62–66).

12 At least one Central District decision has facts almost identical to here, and
13 that court dismissed the tort claims with prejudice. *See RSPE Audio Solutions*, 2013
14 WL 1120664 at *4. That case involved former employees (defendants) who had
15 access to their former employer’s (the plaintiff’s) “confidential information, such as
16 customer lists . . . [and] deal proposals” *Id.* at *1. While employed with the
17 plaintiff, defendants used that confidential information “to contact and solicit
18 [plaintiff’s] customers for the benefit of [plaintiff’s] competitor” *Id.* Among
19 other things, defendants used plaintiff’s “proposed offer terms to draft bid sheets for
20 [plaintiff’s competitor]” and undertook efforts to “divert [plaintiff’s] customers to
21 [plaintiff’s competitor].” *Id.* Defendants then resigned from plaintiff and joined the
22 competitor. *Id.*

23 The complaint in that action pleaded claims of misappropriation of trade
24 secrets under the Act, “intentional interference with prospective economic
25 advantage, unfair business practices, and aiding and abetting misappropriation of
26 trade secret” against the former employees and plaintiff’s competitor. *Id.* The court
27 held that the misappropriation claim under the Act preempted the other three claims.
28 *Id.* at *4. The court’s rationale was simple: “The allegations in the[se three claims],

1 such as that Defendants ‘interfered with deal proposals’ and ‘over-bid price quotes’
 2 are bound up with, if not directly premised upon, Defendants’ use of the trade secrets
 3 identified in Plaintiff’s . . . claim [under the Act].” *Id.* (stating that “[t]he
 4 information and conduct described in the [non-Act claims] appear to be closely
 5 related, if not identical, to that listed in the First Cause of Action under [the Act]”).

6 This Opposition now further details how this law applies to claims for the
 7 intentional interference with contract and the duty of loyalty.

8 **i. Intentional Interference with Contracts**

9 Intentional interference with contractual relations requires, among other
 10 things: (1) a contract with a third party; (2) the defendant knew of the contact; (3) the
 11 defendant acted to breach or disrupt the contractual relationship; and (4) actual
 12 breach or disruption. *Sebastian Int’l, Inc. v. Russolillo*, 162 F. Supp. 2d 1198, 1203
 13 (C.D. Cal. 2001); *Pacific Gas & Electric Co. v. Bear Stearns & Co.*, 50 Cal. 3d
 14 1118, 1126 (1990); Order re: Motion to Dismiss, ECF No. 89 at 5; *see also* Cal. Civ.
 15 Jury Instructions § 2201.

16 Courts have expressly recognized that claims for intentional interference with
 17 contractual relations or business advantage are preempted when they are based on
 18 the same nucleus of facts as the claim under the Act. *K.C. Multimedia, Inc.*, 171 Cal.
 19 App. 4th at 960–61 (“[A]ppellant’s fifth cause of action for tortious interference with
 20 contract rests on the same legal and factual basis as its trade secret misappropriation
 21 claim. . . . [I]t is therefore preempted.”); *Rovince Int’l Corp.*, 2013 WL 5539430 at
 22 *5 (“The only ‘wrongful conduct’ proffered by the FAC is [defendant’s] alleged
 23 misappropriation of [plaintiff’s] trade secrets. [Plaintiff’s] fifth claim thus ‘arise[s]
 24 out of [defendant’s] purported misappropriation of trade secrets.’ As such, it is
 25 superceded by the [Act] and must be dismissed.”).

26 The proposed second amended complaint is founded on alleged confidential
 27 information and alleged trade secrets. The contracts allegedly disrupted are the
 28 “contracts . . . between Jet Edge and its customers” Exhibit 21 to Krompfer

1 Declaration, Proposed Second Amended Complaint, ECF No. 147 at 67–68 (¶¶ 49–
 2 51). This is the same information that forms the basis of Jet Edge’s trade secret
 3 claim: Schembari allegedly stole these customers. Amended Complaint, ECF No. 26
 4 at ¶¶ 71–77; Exhibit 21 to Krompfer Declaration, ECF No. 147, Proposed Second
 5 Amended Complaint at 68–69 (¶¶ 63–65).

6 Judge Birotte’s Order explained why a trade secret claim for theft of
 7 customers preempts an intentional interference with contract claim based on the
 8 same theft of customers:

9 Schembari’s acts of setting up a competing business are not in and of
 10 themselves intentional acts designed to induce a breach or disrupt
 11 contractual relationships. Instead, it is the affirmative act of using Jet
 12 Edge’s client information to solicit business that satisfies this element. In
 13 support of its misappropriation claim, Plaintiff alleges that “Defendant
 14 misappropriated Plaintiff’s trade secret information, through his wrongful
 15 use of that information to compete against Plaintiffs before and after the
 termination of his employment.” (FAC at ¶ 78). Without this necessary
 allegation Plaintiff fails to establish the third element of a claim for
 intentional interference with contractual relations.

16

17 Schembari could not have disrupted the relationship, without taking some
 18 affirmative action directed at or involving Sojitz. Thus, Plaintiff’s
 19 allegation that Schembari utilized confidential information to negotiate
 20 his own partnership with Sojitz provides the affirmative act necessary to
 establish these claims. However, this allegation is also integral to the
 trade secret misappropriation claim, thus, both of the aforementioned
 claims are preempted by CUTSA.

21 Order re: Motion to Dismiss, ECF No. 89 at 6–8 (internal brackets omitted).

22 This analysis applies equally to the new evidence. For instance, Jet Edge cites
 23 an email where “Schembari told one of the Jet Edge Customers that ‘[f]lights
 24 dispatched by Jet Edge . . . never go smoothly’ Motion, ECF No. 144 at 23
 25 (CMECF numbering). This is the same allegedly stolen customer that forms the
 26 basis of Jet Edge’s trade secret claim, and Jet Edge will be using this evidence in
 27
 28

1 support of its misappropriation claim. Exhibit 21 to Krompfer Declaration, Proposed
2 Second Amended Complaint, ECF No. 147 at 67–68 (¶¶ 49–51).

3 Jet Edge also cites evidence that Schembari “assured the Jet Edge Customers
4 that they could separate from Jet Edge without a problem. . . . Ultimately, his
5 interference with Jet Edge’s relationships succeeded as Schembari stole the Jet Edge
6 Customers bringing them to Phenix Jet.” Motion, ECF No. 144 at 23 (CMECF
7 numbering). Again, this is the same common nucleus of facts as Jet Edge’s trade
8 secret claim that Schembari allegedly “stole” these customers.

9 **ii. Duty of Loyalty**

10 Courts have also expressly recognized that a claim for breach of the duty of
11 loyalty is preempted when it is based on the same nucleus of facts as a claim under
12 the Act. *Mattel, Inc. v. MGA Entm’t, Inc.*, Case No. 04-cv-9049, 2011 U.S. Dist.
13 LEXIS 55756, 2011 WL 8427611 at *3 (C.D. Cal. Mar. 28, 2011) (“Any claim
14 based upon a breach of that obligation [of loyalty] is superseded by the California
15 Uniform Trade Secrets Act.”); *Argo Grp. US, Inc. v. Professional Governmental*
16 *Underwriters, Inc.*, Case No. 13-cv-1787, 2014 WL 12577144 at *3–4 (C.D. Cal.
17 Jan. 6, 2014) (holding that the breach of confidence and breach of fiduciary duty
18 claims were preempted because “are based upon ‘the same nucleus of facts,’ namely
19 Seymour’s disclosure of confidential information in violation of his obligations to
20 refrain from disclosing that information”); *see also Rovince Int’l Corp.*, 2013 WL
21 5539430 at *4 (dismissing breach of fiduciary duty claim because it was preempted
22 by the Act).

23 Judge Birotte’s Order followed these cases and held that “Plaintiff either fails
24 to state a claim for breach of the duty of loyalty, or to the extent that such a claim is
25 based on trade misappropriation, it is preempted by CUTSA.” Order re: Motion to
26 Dismiss, ECF No. 89 at 8–9.

27 Jet Edge asserts that new evidence shows that Schembari actually competed
28 with Jet Edge by (i) creating a business plan that identified “the *same* planes under

1 management by Jet Edge” as customers of Schembari and (ii) entering a deal with
 2 “Sojitz . . . that would result in the Jet Edge Customers leaving Jet Edge for his new
 3 company.” Motion, ECF No. 144 at 24 (CMECF numbering). The alleged theft of
 4 these customers is the same basis of Jet Edge’s misappropriation of trade secrets
 5 claim. Exhibit 21 to Krompfer Declaration, Proposed Second Amended Complaint,
 6 ECF No. 147 at 67–68 (¶¶ 49–51). Therefore, it is preempted.

7 There is an additional argument why the duty of loyalty claim is futile: “In
 8 California, there is no tort for ‘breach of duty of loyalty’ that is distinct from the
 9 recognized tort of ‘breach of fiduciary duty.’ The fiduciary relationship is a
 10 prerequisite to the existence of a duty of loyalty.” *Mattel, Inc.*, 2011 WL 8427611 at
 11 *3. “[N]on-fiduciary employees owe no duty of loyalty to their employers.” *Id.* at
 12 *1. Therefore, as a matter of law, an employer cannot assert a cause of action for
 13 breach of loyalty when the employee was not a fiduciary. *Id.* at *3–4 (granting
 14 motion for judgment as a matter of law in favor of defendant-employees on plaintiff-
 15 employer’s claim for breach of the duty of loyalty).

16 A fiduciary duty requires a relationship where “one of the parties is in duty
 17 bound to act with the utmost good faith for the benefit of the other party.” *Wolf v.*
 18 *Superior Court*, 107 Cal. App. 4th 25, 29 (2003). “Traditional examples” include
 19 trustees, business partners, joint venturers, majority shareholders, and members of
 20 the board of directors. *Id.* at 30. By contrast, “[a]n employer-employee relationship
 21 without more, is not a fiduciary relationship.” *Sci. of Skincare, LLC v.*
 22 *Phytoceuticals, Inc.*, Case No. 08-cv-4470, 2009 U.S. Dist. LEXIS 58241, 2009 WL
 23 2050042 at *3 (C.D. Cal. July 8, 2009); *Evenfe v. Esalen Inst.*, Case No. 15-cv-
 24 05457, 2016 U.S. Dist. LEXIS 96843, 2016 WL 3965167 at *7 (N.D. Cal. July 24,
 25 2016) (“[T]he fact of an employer-employee relationship alone is insufficient to
 26 create a fiduciary relationship.”).

27 The proposed complaint does not allege that Schembari falls into any of these
 28 traditional examples. Nor is there any evidence that he fits within these categories.

1 Jet Edge may dispute this argument by citing the same cases it did in its prior
2 opposition. Those cases do not compel a different result.

3 *Huong Que* involved employees who were fiduciaries because they were
4 managing agents” for their employer’s “business dealings.” *Huong Que, Inc. v. Luu*,
5 150 Cal. App. 4th 400, 414 (2007). *Thomas Petroleum* involved an employee who
6 was a fiduciary; he was “the highest-ranking employee” in the office. *Thomas*
7 *Petroleum, LLC v. Lloyd*, Case No. 1:11-cv-00902, 2012 U.S. Dist. LEXIS 142729,
8 2012 WL 4511369 at *1 (E.D. Cal. Oct. 2, 2012). Moreover, the quotation cited in
9 the Opposition was a passing comment in a footnote discussing fiduciaries. *Id.* at
10 *18 n.8 (“This is despite the fact that [defendant] claims ‘[n]o one from [plaintiff]
11 ever told [him] that [he] was a fiduciary of the company.’ . . . The law does not
12 require such specific notice. The duty arises from the employer-employee
13 relationship.”).

14 *Fowler* discusses the loyalty issue only in passing because it was not material
15 to the case, which regarded the former employee’s claims against his former
16 employer “for wrongful termination, breach of contract, and intentional infliction of
17 emotional distress.” *Fowler v. Varian Assocs.*, 196 Cal. App. 3d 34, 36 (1987).
18 *Stokes* is the same: it involved a former employees’ “action for wrongful
19 termination.” *Stokes v. Dole Nut Co.*, 41 Cal. App. 4th 285, 287 (1995). *Stokes* even
20 explicitly recognizes the “most significant[.]” distinction between using the duty of
21 loyalty as a basis for termination versus using the duty as a basis for an affirmative
22 tort claim of breach of the duty. *Id.* at 294.

23 *Eckard Brandes* involved Hawaii law. *Eckard Brandes, Inc. v. Riley*, 338 F.3d
24 1082, 1085 (9th Cir. 2003). *Integral Development Corp.* and *Fields*’ analyses of the
25 breach of loyalty issue were limited to three or four sentences, whereas the leading
26 Central District decision on this issue (*Mattel*) canvassed the issue at length.
27 Compare *Integral Dev. Corp. v. Tolat*, Case No. 12-cv-06575, 2013 U.S. Dist.
28 LEXIS 153705, 2013 WL 5781581 at *3 (N.D. Cal. Oct. 25, 2013); *Fields v. QSP*,

1 *Inc.*, Case No. 10-cv-5772, 2011 U.S. Dist. LEXIS 41350, 2011 WL 1375286 at *3–
 2 4 (C.D. Cal. Apr. 8, 2011) *with Mattel, Inc.*, 2011 WL 8427611 at *1–4.

3 **iii. *Angelica* and *Ikon***

4 The Motion relies primarily on *Angelica*, and secondarily on *Ikon*, for the
 5 proposition that Jet Edge’s intentional interference with contract and breach of the
 6 duty of loyalty claims are not preempted by the Act. Motion, ECF No. 144 at 21–23
 7 (CMECF numbering). Neither case supports the relief sought in the Motion.

8 In the first instance, the Court was well aware of *Angelica* when it granted
 9 Defendants’ Motion to Dismiss. The Court’s Order dismissing the causes of action
 10 Jet Edge now seeks leave to reassert specifically cited *Angelica* for the proposition
 11 that “[a] common law tort claim is not displaced by CUTSA where the allegations
 12 underlying the claim ‘are not based on the existence of a trade secret.’” Order re:
 13 Motion to Dismiss, ECF No. 89 at 5 (internal brackets omitted). The Court applied
 14 *Angelica* and found that Jet Edge’s tort claims were preempted. That interpretation
 15 is not clearly erroneous given the many cases on this issue (and the application of
 16 those cases) detailed above.

17 In any event, the decision in *Angelica* is materially distinguishable. The court
 18 in *Angelica* did not identify the trade secrets that were alleged to have been
 19 misappropriated. *See Angelica Textile Servs., Inc. v. Park*, 220 Cal. App. 4th 495,
 20 498, 502 (2013) (stating only that the plaintiff brought “a claim under the Uniform
 21 Trade Secrets Act” or “claims for misappropriation of trade secrets,” but never
 22 explaining what those claims entailed). Thus, it is impossible to determine whether
 23 the claim for trade secret misappropriation overlapped with the tort claims at issue.

24 *Ikon* involved a narrow claim of stolen trade secrets, so the preemptive bar
 25 was narrow (because the trade secret claim’s nucleus of operative facts was small).
 26
 27
 28

1 The trade secret claim was founded solely on stolen customer lists.⁵ *Ikon Office*
 2 *Solutions, Inc. v. Rezente*, Case No. 2:10-cv-1704, 2011 WL 1402882 at *3 (E.D.
 3 Cal. Apr. 13, 2011). By contrast, the duty of loyalty and interference with
 4 prospective economic relations claims were based on sabotaging “potential deals”
 5 and “encouraging potential Ikon customers to delay or reject concluding any deal
 6 with Ikon.” *Id.* at *2–4. Thus, the factual bases for the claims had little to no
 7 overlap. *See Ikon Office Solutions, Inc.*, 2011 WL 1402882 at *3 (“CUTSA
 8 preempts all common law claims that are ‘based on the same nucleus of facts as the
 9 misappropriation of trade secrets claim for relief.’”).

10 This case is not like *Ikon*. Jet Edge is claiming that Defendants
 11 misappropriated trade secrets in the form of the Sojitz relationship and its customers.
 12 Amended Complaint, ECF No. 26 at ¶¶ 17, 49, 59–61, 66, 71–74; Exhibit 21 to
 13 Krompfer Declaration, ECF No. 147, Proposed Second Amended Complaint at 58–
 14 60, 68–69 (¶¶ 16–18, 22–23, 62–66). The proposed claims of duty of loyalty and
 15 interference with contract are founded on the same the thing: theft of those
 16 customers. Exhibit 21 to Krompfer Declaration, ECF No. 147, Proposed Second
 17 Amended Complaint at 66–67 (CMECF numbering) (¶¶ 49–53, 56–57).

18 III. CONCLUSION

19 For the foregoing reasons, the Motion should be denied.

20 Dated: July 16, 2018

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 26 Phenix Jet International, LLC; and Cosa Di
 Famiglia Holdings, LLC

27 ⁵ The court referenced “other alleged trade secrets” but did not explain what they
 28 were. *Ikon Office Solutions, Inc.*, 2011 WL 1402882 at *3.